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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/930,917	08/16/2001	John E. Gunderman	20386/305	2246

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EXAMINER

GELLNER, JEFFREY L

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 04/23/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application N .

09/930,917

Applicant(s)

GUNDERMAN ET AL.

Examiner

Jeffrey L. Gellner

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-- The MAILING DATE of this communication appears n th cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 April 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5, 7-10, 12-16, 23 and 25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5, 7-10, 12, 14-16, 23 and 25 is/are rejected.
- 7) ☒ Claim(s) 13 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☒ Interview Summary (PTO-413) Paper No(s). 12.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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DETAILED ACTION

Upon reconsideration, prosecution is reopened on all claims not cancelled. Examiner regrets any inconvenience to Applicant. The after-final amendment submitted 7 April 2003, as paper no. 11, has been entered. The following office action is made on that basis.

Claim Objections

Claims 23 and 25 are objected to because of the following informality:

In Claim 23, line 15, the phrase “to attached proximate” should probably be --to be attached proximate--.

Appropriate correction is required.

In Claim 25, line 10, the clause “wherein the ledge defined by” should probably be --wherein the ledge is defined by--.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4, 7-10, 12, 14, 16, 23, and 25 are rejected under 35 U.S.C. 102(b) as being anticipated by Piglia (US 2,141,484).

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As to Claim 1, Piglia discloses a stackable plant support (Fig. 3) comprising upper and lower rings (17 of Fig. 3; col. 2 lines 2-5); at least one leg (13 of Fig. 3) attached to the upper and lower rings (Fig. 3 with 2nd ring not shown), the leg adapted to support the upper and lower rings and engage the ground, the leg comprising a ledge (15 of Fig. 3) shaped so as to permit application of a downward force by a plant support user to engage the plant support with the ground, the ledge defined by a bend in the leg (see Fig. 3), the ledge located below the position of where the lower ring attaches (inherent in Fig. 3 with 2nd ring not shown); wherein the at least one leg is an elongated U-shaped member ("V-shaped member" of col. 1 line 50; Examiner considers Piglia's V-shaped member to be U-shaped) comprising a closed end (region around 14 of Fig.3) and an open end (region around 15 of Fig. 3) defined by two portions of the U-shaped member; the upper ring attached to the at least one leg proximate the closed end such that a loop is formed above the upper ring (inherent in Fig. 3) by the closed end of the leg; the ends of the two portions of the U-shaped member are adapted to engage the ground; and, the plant support shaped to enclose plants (col. 1 lines 1-3) and support plant containers (defined as placing a container's bottom on the region of 14).

As to Claim 2, Piglia further discloses the lower ring having a larger diameter than the upper ring (inherent in Fig. 3).

As to Claim 3, Piglia further discloses a middle ring (col. 2 lines 2-5).

As to Claim 4, Piglia further discloses the support made of wire (col. 1 line 55 and col. 2 line 1).

As to Claim 7, Piglia further discloses the ledge having a bend in two portions of the U-shaped member (15 of Fig. 3).

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As to Claim 8, Piglia further discloses the upper and lower rings shaped so as to permit insertion of a plant container within the support (defined as placing a pot under the support), and the upper ring adapted to engage a portion of the plant container (defined as a pot large enough to contact the upper ring being used).

As to Claim 9, Piglia further discloses the rings attached to the leg by welding (col. 2 line 2).

As to Claim 10, Piglia discloses a plant cage apparatus (Fig. 3) comprising at least two arcuate parallel vertically spaced horizontally disposed members (17 of Fig. 3; col. 2 lines 2-5), wherein the two arcuate members are an upper ring and an lower ring (17 of Fig. 3; col. 2 lines 2-5 with one of the two rings not shown), the lower ring having a larger diameter than the upper ring (inherent in Fig. 3), the upper and lower ring shaped so as to facilitate the stacking of a plurality of plant cage apparati (inherent in Fig. 3), and to accommodate the insertion of a plant container within the plant cage apparatus (defined as placing a container under the apparatus); the upper ring engaging a portion of the plant container (defined as a pot contacting the upper ring); at least two legs (13 of Fig. 3) attached to the circular members wherein each of the legs is formed with an elongate inverted U-shaped member ("V-shaped member" of col. 1 line 50; Examiner considers Piglia's V-shaped member to be U-shaped); a ledge (15 of Fig. 3) formed on at least one leg of the legs for securement of the plant cage apparatus relative to the associated plant ("plant covers for sheltering young plants" of col. 1 lines 2-3); at least one loop (region around 14 of Fig. 3) formed by the connection of said legs and one of the arcuate members; for

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removal and transport of the plant cage apparatus; and, wherein the plant cage is adapted to support an associated plant ("plant covers for sheltering young plants" of col. 1 lines 2-3).

As to Claim 16, Piglia further discloses the arcuate member as circular (17 of Fig. 3).

As to Claims 12, 14, and 25, Piglia discloses a wire structure (Fig. 3) as both a supporting structure for plants and plant containers comprising a wire structure centered about a vertical axis (vertical axis running through point where element 13s intersect in Fig. 3), the wire structure having: at least two parallel vertically spaced horizontally disposed rings (17 of Fig. 3; col. 2 lines 2-5), connected to at least two U-shaped legs (13 of Fig. 3) extending downwardly from the rings, the wire structure defining an interior volume (see Fig. 3), a ledge (15 of Fig. 3) formed on at least one of the legs for securement of the wire structure; and, at least one loop (region around 14 of Fig. 3) formed by the connection of one of the legs and one of the rings for removal and transport of the wire structure; wherein the two rings include an upper ring and an lower ring (17 of Fig. 3; col. 2 lines 2-5 with one of the two rings not shown), the lower ring having a larger diameter than the upper ring (inherent in Fig. 3), the upper and lower ring shaped so as to facilitate the stacking of a plurality of wire structures (inherent in Fig. 3), and to accommodate the insertion of a plant container within the structure (col. 1 lines 2-3) within the structure, the upper ring engaging a portion of the plant container (defined as container in contact with the upper ring); wherein the ledge (25 of Fig. 3) is defined by a bend (region between 16 and 15 of Fig. 3) in the leg located below the position where the at least one ring attaches to the leg (Fig. 3). The device of Piglia would inherently perform the method steps recited in Claim 12.

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As to Claim 23, Piglia discloses a support member (13 of Fig. 3) for a plant support apparatus (Fig. 3) comprising at least one leg (region around leadline of 11 in Fig. 3) attachable to an upper ring and lower ring (17 of Fig. 3; col. 2 lines 2-5), the leg adapted to support the rings (Fig. 3) and engage the ground (region around 15 of Fig. 3); the at least one leg comprising a ledge (15 of Fig. 3) shaped so as to permit application of a downward force by a plant support user (inherent in Fig. 3) to engage the plant support with the ground; wherein the ledge is defined by a bend in the at least leg (shown between 16 and 15 of Fig. 3), the ledge located below the position where the lower ring attaches to the at least one leg (Fig. 3); where in the at least one leg is an elongate U-shaped member (13 of Fig. 3; "V-shaped member" of col. 1 line 50; Examiner considers Piglia's V-shaped member to be U-shaped) comprising a closed end (region around 14 of Fig. 3) and an open end (region around 15 of Fig. 3) defined by two portions of the U-shaped member (Fig. 3); a portion of the upper ring adapted to be attached proximate the closed end of the at least one leg (Fig. 3) such that a loop (region around 14 of Fig. 3) is formed above the upper ring by the closed end of the leg (region around 14 of Fig. 3); and, wherein the loop is positioned in a different plane as the two portions of the U-shaped member at the open end (defining the planes as horizontal at 15 and 14 of Fig. 3).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Piglia (US 2,141,484) in view of Elliott (US 5,640,802).

As to Claim 5, the limitations of Claim 1 are disclosed as described above. Not disclosed is the support made of plastic. Elliott, however, discloses a support made of plastic (col. 2 lines 66). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the support of Piglia by making it of plastic as disclosed by Elliott so that it is durable enough for reuse (see Elliott at col. 1 lines 48-49).

Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Piglia (US 2,141,484) in view of Howell (US 5,050,339).

As to Claim 15, the limitations of Claim 4 are disclosed as described above. Not disclosed is the wire made of galvanized metal. Howell, however, discloses a plant support made of galvanized wire (col. 2 line 1). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the plant support of Piglia by making the wire galvanized as disclosed by Howell so as to more better resist moisture.

Allowable Subject Matter

Claims 13 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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Response to Arguments

Applicant's arguments with respect to claims 1-5, 7-10, 12-16, 23, and 25 have been considered but are moot in view of the new ground(s) of rejection.


Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Penny and Fetterman disclose in the prior art plant supports.

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Jeffrey L. Gellner whose telephone number is 703.305.0053. The Examiner can normally be reached Monday through Thursday from 8:30 am to 4:00 pm. The Examiner can also be reached on alternate Fridays.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's Supervisor, Peter Poon, can be reached at 703.308.2574. The fax phone numbers for the Technology Center where this application or proceeding is assigned are 703.305.7687, 703.305.3597, and 703.306.4195.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703.308.1113.



Jeffrey L. Gellner